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Dear Ms Fernandes,

Planning Act 2008, Norfolk Boreas Limited, Proposed Norfolk Boreas Offshore Wind Farm

MMO Deadline 14 Response

On 11 June 2019, the Marine Management Organisation (the "MMO") received notice under section 56 of the Planning Act 2008 (the "PA 2008") that the Planning Inspectorate ("PINS") had accepted an application made by Norfolk Boreas Limited (the "Applicant") for determination of a development consent order for the construction, maintenance and operation of the proposed Norfolk Boreas Offshore Wind Farm (the "DCO Application") (MMO ref: DCO/2017/00002; PINS ref: EN010087).

The Applicant seeks authorisation for the construction, operation and maintenance of the DCO Application, comprising of up to 158 wind turbine generators together with associated onshore and offshore infrastructure and all associated development ("the "Project").

This document comprises the MMO comments in respect of the DCO Application submitted in response to Deadline 14, including responses to the Rule 17 Letter dated 18 August 2020 and the MMO's response to the Examining Authority's (ExA) fifth round of questions.

This written representation is submitted without prejudice to any future representation the MMO may make about the DCO Application throughout the examination process. This representation is also submitted without prejudice to any decision the MMO may make on any associated application for consent, permission, approval or any other type of authorisation submitted to the MMO either for the works in the marine area or for any other authorisation relevant to the proposed development.

Yours Sincerely

[redacted]

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1. MMO response to ExA Fifth Round of Written Questions

1.1 Q5.5.0.1 Updated draft DCO (dDCO)

Provide any comments on the Applicant's updated dDCO submitted at D13 [REP13-007] to [REP13-012].

1.1.1 The MMO has reviewed the updated dDCO and is content with most of the updates as these have been implemented from the Norfolk Vanguard decision.

1.1.2 The MMO does have comments on the inclusion of Condition 20 to Schedules 11 and 12 and these are discussed in section 1.3 of this document. In addition to this the MMO has requested a further update in relation to timescales. Please see section 1.5 of this document for further information.

1.2 Q5.5.4.3 ERCOP Conditions 15 and 10

Condition 15(8) in Schedules 9 and 10 and 10(8) in Schedules 11 and 12 requires MMO confirmation in writing that the undertaker has adequately addressed MCA recommendations contained within MGN543 "Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues" and its annexes. The Deemed Marine Licence (DML) condition no longer refers explicitly to approval and implementation of an ERCOP.

Confirm if this redrafting is accepted by MMO and MCA and confirm whether the same wording will be included in Schedule 13 of the dDCO.

1.2.1 The MMO understands the Applicant and the Maritime and Coastguard Agency have agreed on the changes to this wording in their Statement of Common Ground (SoCG) (REP9-024). The MMO is content with the updated wording agreed.

1.2.2 The MMO notes the Applicant has now agreed to include the condition in Schedule 13 and this will now be updated in the next dDCO, the MMO is content with the inclusion in Schedule 13.

1.3 Q5.5.4.4 Decommissioning of cables in HHW SAC Conditions 20 and 3(1)(g)

Confirm satisfaction or otherwise with change to the dDCO [REP13- 007/008] that includes a new cable decommissioning condition 20 in Schedules 11 and 12 and removes condition 3(1)(g) prohibiting rock or gravel dumping.

1.3.1 The MMO has been involved in ongoing discussions with the Applicant and Natural England (NE) in relation to the requirement for both conditions. The MMO notes the Applicant removed Part 4, condition 3(1)(g) from Schedule 11 and 12 of the dDCO and replaced this with condition 20.

1.3.2 In a meeting on 24 August 2020, NE , the Applicant and the MMO agreed that Schedule 11 and 12 will be updated to include an amended condition 3(1)(g):

'(g) in the Haisborough, Hammond and Winterton Special Area of Conservation, cable protection must not take the form of rock or gravel dumping where it is deployed to protect export cables apart from at cable crossing locations with existing cables and pipelines.'

1.3.3 This will be submitted in the Applicant's response to the ExA fifth round of written questions and will be in the updated dDCO at Deadline 14. This updated wording is the preferred approach to securing the decommissioning of cable protection within the Haisborough Hammond and Winterton (HHW) Special Area of Conservation (SAC) as condition 3(1)(g) secures the type of cable protection that can be decommissioned.

1.3.4 The Applicant, NE and the MMO also agreed that condition 20 of Schedule 11 and 12 (wording below) should be removed from the DCO:

'Decommissioning of cable protection within the Haisborough, Hammond and Winterton Special Area of Conservation

20.—(1) The obligations under paragraphs (2) and (3) shall only apply if and to the extent that—

(a) cable protection is installed as part of the authorised project within the Haisborough, Hammond and Winterton Special Area of Conservation as at the date of the grant of the Order;

(b) it is a requirement of the written decommissioning programme approved by the Secretary of State pursuant to section 105 (requirement to prepare decommissioning programmes) of the 2004 Act, including any modification to the programme under section 108 (reviews and revisions of decommissioning programmes), that such cable protection is removed as part of the decommissioning of the authorised project.

(2) Within such timeframe as specified within the decommissioning programme approved by the Secretary of State, the undertaker shall carry out an appropriate survey of cables within the Haisborough, Hammond and Winterton Special Area of Conservation that are subject to cable protection and that are situated within the Haisborough, Hammond and Winterton Special Area of Conservation to assess the integrity and condition of that cable protection and determine the appropriate extent of the feasibility of the removal of such cable protection having regard to the condition of the cable protection and feasibility of any new removal techniques at that time, and submit that along with a method statement for recovery of cable protection to the MMO.

(3) Within such timeframe as specified within the decommissioning programme approved by the Secretary of State, the MMO must confirm whether or not it is satisfied with the method statement pursuant to (2) above.

(4) If the MMO has confirmed it is satisfied pursuant to (3) above, then within such timeframe as specified within the decommissioning programme approved by the Secretary of State, the undertaker shall endeavour to recover the cable protection to the extent identified in the survey and according to the methodology set out in the method statement submitted pursuant to (2) above.'

The MMO notes that the Applicant will submit a revised dDCO at Deadline 14 reflecting this change.

1.3.5 Notwithstanding this the MMO understands it is for the Secretary of State (SoS) to make the final decision as to which condition should be included. If the SoS decides that Condition 20 is required in Schedules 11 and 12, the MMO has major concerns about this approach, these have been set out below.

1.3.6 The MMO recognises that it is a matter for the SoS to approve decommissioning programmes under the Energy Act 2004 and to decide how such programmes are secured. The MMO also understands that if decommissioning of cable protection is a requirement of a decommissioning programme approved by the SoS then enforcement of that programme is a matter for the SoS under the Energy Act 2004. As the MMO has no function to discharge decommissioning programmes under the Energy Act 2004 we therefore question whether this condition should be included in the DMLs.

1.3.7 The MMO's understanding is that works to decommission cable protection are not included in the licensed marine activities in the DMLs and will therefore require additional consent through a marine licence granted under the Marine and Coastal Access Act 2009 (MCAA 2009). In our view the condition as drafted, would appear to make decommissioning subject to dual regulation through both the Energy Act 2004 and MCAA 2009 and this could be a cause of confusion. The MMO therefore considers that decommissioning works should not be included in the DMLs. The marine environment is changeable and therefore in our view decommissioning works should have a separate consent at the time of decommissioning to ensure that all required assessments are appropriate at that time.

1.3.8 The MMO believes that the SoS has included the condition to enable the MMO (as the competent authority under the consenting process) to review and approve the Applicant's method statement for the decommissioning of cable protection within the HHW SAC, if the SoS requires this through a decommissioning programme under section 105 of the Energy Act 2004. The MMO's understanding is that this is to ensure the project does not cause an adverse effect on the integrity (AEoI) of the HHW SAC. The MMO defers to NE in relation to AEoI but highlights that, as indicated in paragraph 1.3.7, the decommissioning works will still require consent under the Marine and Coastal Access Act 2009.

1.3.9 The MMO has concerns that the way condition 20(4), of schedules 11 and 12, is currently worded, this may allow works to be undertaken that are not consented:

'(4) If the MMO has confirmed it is satisfied pursuant to (3) above, then within suchtimeframe as specified within the decommissioning programme approved by the Secretary of State, the undertaker shall endeavour to recover the cable protection to the extent identified in the survey and according to the methodology set out in the method statement submitted pursuant to (2) above.'

The MMO believes this wording could duplicate and potentially conflict with the further decommissioning consent required through MCAA 2009.

1.3.10 In addition, Condition 20(1) does not refer to 20(4) and should be updated to the text below as it is not clear when the requirement will come into force.

'20.—(1) The obligations under paragraphs (2), ~~and~~ (3) and (4) shall only apply if and to the extent that—'

1.3.11 The MMO also has concerns regarding the fact that it will have no control over the timescales to review, consult and approve the documentation required by the SoS in Condition 20 as currently drafted. The MMO questions whether this would amount to reviewing one document at an early stage in the project, one document at the decommissioning stage of the project or an iterative version that is submitted at periods throughout the consented project? The MMO believes these timescales should be agreed between the SoS and the MMO prior to the decommissioning programme being submitted and approved as this will ensure that impacts on the marine environment are fully assessed.

1.3.12 In addition to this the wording of condition 20(3) of Schedules 11 and 12 is not consistent with the wording of other conditions throughout the dDMLs. The MMO believes the following wording should be used if the condition is included:

'(3) Within such timeframe as specified within the decommissioning programme approved by the Secretary of State, the MMO must ~~confirm whether or not it is satisfied~~ approve in writing the method statement pursuant to (2) above.'

1.3.13 In conclusion, the MMO considers that if the SoS is has concerns in relation to decommissioning of cable protection this would best be dealt with as requirement under the DCO but considers that any requirement for a decommissioning programme under the Energy Act 2004 should provide clarity on the timescales for submission of documents and also require consultation with the Statutory Nature Conservation Body prior to approval.

1.4 Q5.5.4.5 MMO objection to Part 5 of Schedules 9 to 13 Procedure for Appeals

Confirm satisfaction with the amendment to the Boreas dDCO/DMLs in [REP13-007/008] removing part 5 following the determination of the Norfolk Vanguard application. The MMO had previously sustained an objection to Part 5 of Schedules 9 to 13 which proposes an override of the Marine Licensing (Licence Application Appeals) Regulations 2011 (Appeal Regulations) to enable the Applicant to appeal a MMO decision or failure to determine within the prescribed time period. In SoCG [REP9-023] the parties agree with each other that it should be the Secretary of State who decides this matter. TH also supported the MMO's position in regard to arbitration or appeal and deemed refusal.

1.4.1 The MMO has consistently maintained the position that it would be inappropriate to subject the MMO to an arbitration and appeals process as this would place the Applicant in a more advantageous position than an applicant applying for a marine licence under MCAA 2009.

1.4.2 Further, there is no evidence to show that the MMO has caused delays in the exercise of this function and the removal of Part 5 is consistent with the Norfolk Vanguard decision and other decisions on recent DCO cases. The Norfolk Vanguard decision also accepted that there were dangers in a deemed discharge process given the importance of the matters to which it would apply and given the need to arrive at a properly considered decision.

1.4.3 The MMO therefore welcomes the removal of the appeals process from the dDCO (REP13-024) and this will be reflected in the final SoCG with the MMO and the Applicant which will be submitted by the Applicant at Deadline 16.

1.5 Q5.16.0.5 Additional information

The Applicant and Interested Parties are invited to submit any additional information to assist the ExA in reaching its recommendation to the SoS not covered previously in the Examination, or in the responses provided above.

1.5.1 The MMO understands the SoS in Norfolk Vanguard advised there was insufficient evidence to increase the timescales for the submission of documents from 4 months to 6 months. The MMO acknowledges that the applicant considers that 4 months is an appropriate timescale as this is consistent with the Norfolk Vanguard decision. However, the MMO still believes 6 months is a more realistic timescale for certain documents as this will enable all parties to efficiently discharge conditions.

1.5.2 The MMO is currently discussing this with the Applicant to see if it would be possible to update the DMLs to include a 6-month submission date for the following documents:

- HHW SAC Site integrity Plan (SIP) – condition 9(m) of Schedules 11 and 12 includes 2 conditions to allow the ExA do decide on the best approach for managing impacts to the HHW SAC. The MMO notes that the cable specification, installation and monitoring plan (CSIMP) condition specifies 6 months and the MMO believes the HHW SIP condition should also include the 6-month time scale, if the SoS includes this condition.
- Southern North Sea (SNS) SAC SIP – due to the nature of this document the MMO believes that the document will need in depth review and multiple rounds of consultation along with detailed review of the in combination impacts with other industry activities. The MMO believes it is in the best interests of both the Applicant and the MMO if this has a 6-month submission date.
- MMMP/Noise monitoring - These will coincide with the SNS SIP therefore the same timescale is required.
- Ornithology plan – the MMO has experience of a number of windfarms in the pre-construction phase and in our experience, there is usually a need for multiple rounds of consultation in relation to offshore ornithology monitoring. The MMO believes that as technology is developing and funding for monitoring grows across the industry this plan will need a longer timescale to agree the final details and therefore 6 months is an appropriate timescale for submission.

1.5.3 The MMO believes this will assist in our ability to meet the deadlines without the need for requesting additional time to discharge the documents. This will also give the Applicant more certainty about timescales.

2. MMO response to Rule 17 Letter

2.1 Statement of Common Ground with the MMO: Commercial Fisheries To: the Applicant and the MMO

Under commercial fisheries in the SoCG between the Applicant and the MMO, there is a statement on cumulative impact assessment (CIA) as follows: "The cumulative impact conclusions of negligible or minor significance are appropriate". [REP9-023, page 45]. This appears to be inconsistent with the findings of the CIA [APP-245, Table 32.8] in which moderate adverse (and therefore significant) effects are predicted for certain commercial fisheries (Dutch, Anglo-Dutch and Belgian beam trawling and Dutch seine netting).

The Applicant and the MMO are requested by Deadline 14 (25 August) to:

1. provide an explanation for the apparent discrepancy and/ or update the SoCG if required.

2.Or if necessary, the Applicant is asked to provide an update to the CIA.

2.1.1 The MMO thanks the ExA for highlighting this discrepancy. The MMO has discussed this with the Applicant and can confirm that the SoCG has been amended to reflect this. The MMO and the Applicant agreed this point and completed a full review of Chapter 14 Commercial fisheries [APP-227] prior to providing their relevant representation [RR-069] and agree with the outcomes of the assessment. The MMO note the change is due to the worst-case scenario of the current proposals for closures to fishing within MPAs in the North Sea (in UK, Dutch and German waters), there is little certainty that all of the proposed closures will occur. The final SoCG will be submitted by the Applicant at Deadline 16.

2.1.2 The MMO believes no update to the CIA is required.

3. Comments on Deadline 13 Submissions

3.1 REP13-013: Applicants response to request for further written questions - R17.1.25 – HHW SAC SIP and CSIMP

3.1.1 The MMO understands that NE, the Applicant and the MMO agree that the CSIMP, which contains all the same mitigation measures but without the Grampian condition, is the preferred route to manage the impacts to the HHW SAC.

3.1.2 The MMO believes the SIP should therefore be removed from the dDCO. Please see our further detailed comments in section 2.2 of REP13-035.

Yours Sincerely

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